

MIGRATORY BIRD PROTECTION ACT OF 2020

SEPTEMBER 1, 2020.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. GRIJALVA, from the Committee on Natural Resources,
submitted the following

R E P O R T

together with

DISSENTING VIEWS

[To accompany H.R. 5552]

[Including cost estimate of the Congressional Budget Office]

The Committee on Natural Resources, to whom was referred the bill (H.R. 5552) to amend the Migratory Bird Treaty Act to affirm that the Migratory Bird Treaty Act's prohibition on the unauthorized take or killing of migratory birds includes incidental take by commercial activities, and to direct the United States Fish and Wildlife Service to regulate such incidental take, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Migratory Bird Protection Act of 2020”.

SEC. 2. AMENDMENTS TO THE MIGRATORY BIRD TREATY ACT.

(a) INCIDENTAL TAKE.—The Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) is amended in section 2(a), by inserting “incidentally take,” before “attempt to take,”.

(b) COMMERCIAL ACTIVITY.—

(1) The Migratory Bird Treaty Act (16 U.S.C. 703 et seq.) is amended by inserting after section 13 the following:

“SEC. 14. INCIDENTAL TAKE OF MIGRATORY BIRDS.

“(a) IN GENERAL.—It shall be a violation of this Act for any person to incidentally take a migratory bird as a result of a commercial activity except as authorized by this section and regulations issued pursuant to this section.

“(b) GENERAL PERMITS.—The Secretary shall regulate the incidental take of migratory birds as a result of commercial activity by issuing general permits for par-

ticular industries, as identified by standard industrial classification, that the Secretary determines have broadly similar levels of incidental take and for which generally applicable best management practices or technologies exist that can effectively avoid or minimize such impacts. With respect to each such industry, the Secretary shall, based on the best available science—

“(1) identify the commercial activity covered by the regulation;

“(2) specify appropriate mitigation to be implemented by a person seeking coverage under a general permit, including adoption of best management practices or technologies that the Secretary has determined are practicable and effective in avoiding or minimizing the incidental take of migratory birds as a result of such commercial activity;

“(3) specify a mitigation fee in an amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from such commercial activity; and

“(4) specify a permit fee in an amount that the Secretary determines is sufficient to offset the cost of developing and revising such regulations and administering the research program established under subsection (s).

“(c) REVISION OF GENERAL PERMITS.—The Secretary shall revise a general permit issued under subsection (b) if such Secretary determines that revision is appropriate, or if—

“(1) the extent or nature of the incidental take of migratory birds caused by the commercial activity covered by the regulation is significantly different than the extent or nature of such incidental take that formed the basis of the regulation;

“(2) new best management practices or technologies can significantly reduce such incidental take and can practicably be adopted by the persons engaged in such commercial activity; or

“(3) such permit has not been revised in the 10 year period beginning on the date such permit was issued.

“(d) CONSULTATION.—The Secretary shall, before issuing a general permit under subsection (b), consult with persons engaged in the industry to which such permit would apply and other interested stakeholders and afford such persons an opportunity to submit relevant information.

“(e) PRIORITY GENERAL PERMITS.—

“(1) IN GENERAL.—The Secretary shall give priority to development of general permits with respect to industries for which substantial information exists regarding the extent and nature of incidental take of migratory birds caused by such industry and the efficacy and practicability of best management practices and technologies in reducing such incidental take.

“(2) COMMERCIAL ACTIVITIES WITH SPECIFIC DEADLINES.—The Secretary shall issue general permits under subsection (b)—

“(A) not later than 5 years after the date of enactment of this Act with respect to—

“(i) oil, gas, and wastewater disposal pits;

“(ii) methane and other gas burner pipes;

“(iii) communication towers;

“(iv) electric transmission and distribution lines; and

“(v) wind power generation facilities; and

“(B) not later than 8 years after the date of enactment for this Act with respect to solar powered generation facilities.

“(f) MITIGATION FEE.—The mitigation fee for each general permit shall be the amount that the Secretary determines reasonably compensates, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from the covered commercial activity after the application of any mitigation measures specified by the Secretary under subsection (b)(2). Such determination shall be, to the maximum extent practicable, based on objective and standardized metrics such as the size or capacity of a facility for which a person seeks coverage.

“(g) ENDANGERED SPECIES ACT OF 1973 AND NATIONAL ENVIRONMENTAL POLICY ACT.—Before issuing a general permit pursuant to subsection (b), the Secretary shall consult the United States Fish and Wildlife Service and the National Marine Fisheries Service pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)), and prepare an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

“(h) PERSONS SEEKING AUTHORIZATION FOR INCIDENTAL TAKE.—Except as provided in subsection (i), a person is authorized to incidentally take migratory birds

if such person is engaged in a commercial activity with respect to which a general permit has been issued under subsection (b) and such person—

“(1) notifies the Secretary in writing that such person is accepting coverage under such permit;

“(2) annually certifies, in writing, to the Secretary that such person is in compliance with this Act and maintains records demonstrating such compliance;

“(3) adopts each best management practice or technology specified by the Secretary under subsection (b)(2);

“(4) pays the mitigation fee specified by the Secretary under subsection (b)(3) at the time such person notifies the Secretary pursuant to paragraph (1), and annually thereafter; and

“(5) pays the permit fee specified by the Secretary under subsection (b)(4) at the time such person notifies the Secretary pursuant to paragraph (1).

“(i) VIOLATION OF TERMS OF GENERAL PERMIT.—The Secretary shall end the coverage of a person under a general permit if such person does not fulfill the requirements to maintain such permit under subsection (h).

“(j) DURATION OF COVERAGE UNDER A GENERAL PERMIT.—Except as provided in subsection (i), a person authorized to take migratory birds pursuant to a general permit shall be subject to the terms of such general permit for a period of ten years beginning on the date such person is first authorized for such take, irrespective of different terms in a subsequently issued general permit.

“(k) PLATFORM FOR EFFICIENT CERTIFICATION.—The Secretary shall establish a web-based platform or other efficient mechanism for persons to file a certification and pay the fees required by subsection (h) without requiring individualized review.

“(l) INTERIM COVERAGE FOR COMMERCIAL ACTIVITIES PROPOSED FOR A GENERAL PERMIT.—

“(1) COMMERCIAL ACTIVITY WITH A SPECIFIED DEADLINE.—Persons or entities engaged in commercial activities listed in subsection (e)(2) shall, upon payment of a mitigation fee in an amount determined under paragraph (3) and submission of a certification of compliance to the Secretary in accordance with this subsection, be exempt from liability for incidental take caused by such commercial activities until the earlier of—

“(A) the issuance of a general permit covering such commercial activity under subsection (b); or

“(B) with respect to—

“(i) an activity described in subsection (e)(2)(A), the date that is 5 years after the date of enactment of this section; or

“(ii) an activity described in subsection (e)(2)(B), the date that is 8 years after the date of enactment of this section.

“(2) COMMERCIAL ACTIVITY FOR WHICH THE SECRETARY HAS GIVEN NOTICE OF INTENT TO ISSUE A PERMIT.—A person engaged in a commercial activity for which the Secretary has given notice in the Federal Register of intent to issue a general permit under subsection (b) shall, upon payment of a mitigation fee in an amount determined under paragraph (3) and submission of a certification of compliance to the Secretary in accordance with this subsection, be exempt from liability for incidental take caused by such commercial activities until the earlier of—

“(A) the date that is 5 years after the date of issuance of such notice; or

“(B) the issuance of such regulation.

“(3) MITIGATION FEE.—The amount of the mitigation fee required by paragraph (1) and (2) shall be the amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from the relevant commercial activity.

“(4) CERTIFICATION OF MITIGATION MEASURES.—A person seeking interim coverage under this subsection shall submit to the Secretary a certification identifying any measures such person has taken to minimize incidental take of migratory birds resulting from the commercial activity for which such person is seeking interim coverage and committing to continue such measures for the duration of the interim coverage.

“(5) RECKLESS OR GROSSLY NEGLIGENT CONDUCT.—The exemption from liability for commercial activities receiving interim coverage under this subsection shall not extend to incidental take that is caused by conduct that is reckless or grossly negligent.

“(m) INDIVIDUAL PERMITS.—The Secretary may provide a permit on an individual basis to incidentally take migratory birds to a person engaged in a commercial activity for which authorizing regulations have not been issued. Each individual permit shall—

“(1) identify the commercial activity to which the permit applies;

- “(2) specify the duration of the permit, not to exceed 10 years;
- “(3) specify the amount and nature of incidental take authorized by the permit;
- “(4) specify best management practices or technologies that the Secretary has determined are practicable and effective in avoiding or minimizing the incidental take of migratory birds by such commercial activity;
- “(5) specify a mitigation fee in an amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from such commercial activity;
- “(6) specify a permit fee, to be paid at the time such person submits a certification to the Secretary pursuant to paragraph (7), to offset the cost of developing and revising such permit and administering the research program established under subsection (s);
- “(7) require such person to submit to the Secretary an annual certification demonstrating such person’s compliance with the terms of the permit;
- “(8) provide for the terms of the permit to be revised during the duration of such permit if new information indicates that—
 - “(A) the extent or nature of the incidental take of migratory birds caused by such commercial activities is significantly different than was understood at the time such permit was issued; or
 - “(B) new best management practices, technologies or other measures can significantly reduce such impacts and can practicably be adopted by the applicant; and
- “(9) provide for revocation of the permit if the applicant fails to comply with the terms of such permit.
- “(n) COMPLIANCE CERTIFICATION.—The Secretary shall make each certification submitted under this section publicly available.
- “(o) DE MINIMIS ACTIVITIES.—The Secretary shall make a rule identifying categories of commercial activities by standard industrial classification that are exempt from liability for the killing or taking of migratory birds under this Act because they do not cumulatively or individually pose appreciable risks to migratory birds.
- “(p) DEPOSIT OF MITIGATION FEES.—Mitigation fees paid under this section shall be deposited into the North American Wetlands Conservation Fund established under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.), the Neotropical Migratory Bird Conservation Fund established by section 9 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108), or such other fund or account established by the Secretary provided that priority for use of such fees shall be given to mitigating impacts or restoring or enhancing populations of bird species—
 - “(1) affected by the permitted activities; and
 - “(2) identified as ‘birds of conservation concern’ under authority of section 13 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912).
- “(q) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated \$10,000,000 for each fiscal year beginning after the date of the enactment of this section to carry out this section.
- “(r) REPORT TO CONGRESS.—Not later than 5 years after the date of enactment of this section, and at the end of each 5 year period thereafter, the Secretary shall submit a report to the Chair and Ranking Member of the House Natural Resources Committee and to the Chair and Ranking Member of the Senate Environment and Public Works Committee on—
 - “(1) the conservation status of migratory birds;
 - “(2) the impacts upon migratory birds of commercial activities for which authorizing regulations have been issued under this section;
 - “(3) the effectiveness of best management practices, technologies, and other measures in reducing such impacts; and
 - “(4) such Secretary’s progress in carrying out the functions and responsibilities given to the Secretary under this section.
- “(s) RESEARCH PROGRAM.—The Secretary shall establish and maintain, in consultation with State fish and wildlife agencies, research institutions, institutions of higher education (as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), wildlife conservation groups, and representatives of commercial activities regulated under this section, a research program to—
 - “(1) evaluate the effectiveness of best management practices and technologies incorporated in regulations and permits under this section;
 - “(2) develop and evaluate new or improved best management practices and technologies; and
 - “(3) evaluate the impacts of commercial activities regulated under this section on bird populations.

“SEC. 15. DEFINITIONS.

“For the purposes of this Act:

“(1) INCIDENTAL TAKE.—The terms ‘incidental take’ and ‘incidentally take’ means the killing or taking of migratory birds that directly and foreseeably results from, but is not the purpose of, a commercial activity.

“(2) COMMERCIAL ACTIVITY.—The term ‘commercial activity’ means—

“(A) the conduct of any aspect of a business, concession, or service in order to provide goods or services to any person for compensation, including manufacturing, distributing, transporting, and marketing goods and services; and

“(B) activities of Federal, State, or local governments related to the management or administration of government property or programs.

“(3) BEST MANAGEMENT PRACTICES.—The term ‘best management practices’ means operational practices, siting, and other guidelines prescribed by the Secretary to avoid or minimize the incidental take of migratory birds.

“(4) SECRETARY.—The term ‘Secretary’ means the Secretary of the Interior acting through the Director of the United States Fish and Wildlife Service.”

(2) CONFORMING AMENDMENTS.—The Migratory Bird Treaty Act is amended—

(A) in section 3, by striking “of Agriculture”;

(B) in section 5—

(i) by striking “of the Interior”; and

(ii) by striking “Agriculture authorized by the Secretary of Agriculture” and inserting “Interior authorized by the Secretary”;

(C) in section 6(d) by striking “of the Interior”; and

(D) in section 9, by striking “of Agriculture”.

(c) PENALTIES.—Section 6 of the Migratory Bird Treaty Act (16 U.S.C. 707) is amended by inserting after subsection (d) the following:

“(e) Whoever in violation of this Act, shall incidentally take a migratory bird or violate the terms of a permit or any rule issued by the Secretary to administer section 14 of this Act may be assessed a civil penalty by the Secretary of not more than \$10,000 per violation, except that unpermitted incidental take which is caused by conduct that is reckless or grossly negligent shall be subject to the penalties of subsection (a). The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of the terms of a permit or regulation issued under such section.”.

PURPOSE OF THE BILL

The purpose of H.R. 5552 is to amend the Migratory Bird Treaty Act to affirm that the Migratory Bird Treaty Act’s prohibition on the unauthorized take or killing of migratory birds includes incidental take by commercial activities, and to direct the United States Fish and Wildlife Service to regulate such incidental take, and for other purposes.

BACKGROUND AND NEED FOR LEGISLATION

In the 1800s, bird populations in the United States drastically declined due to unregulated hunting and the commercial trade in bird feathers. In response to this decline, in 1916, the United States signed a treaty with Great Britain (acting on behalf of Canada) that prevented the hunting of insectivorous and non-game birds and set hunting seasons for game birds.¹ In 1918, Congress codified the agreement between the United States and Canada by enacting the Migratory Bird Treaty Act² (MBTA), which criminalized the pursuit, hunt, take, capture, kill, and sale of mi-

¹Jesse Greenspan, *The History and Evolution of the Migratory Bird Treaty Act*, AUDUBON (May 22, 2015), <https://www.audubon.org/news/the-history-and-evolution-migratory-bird-treaty-act>.

²Ch. 128, 40 Stat. 755 (1918), <https://uscode.house.gov/statviewer.htm?volume=40&page=755> (codified as amended at 16 U.S.C. §§ 703–11, https://uscode.house.gov/table3/1918_128.htm) (statutory compilation as amended through P.L. 116–9 at <https://www.govinfo.gov/content/pkg/COMPS-3009/pdf/COMPS-3009.pdf>).

gratory birds and their parts, nests, or eggs.³ The United States accomplished similar treaties with Mexico (in 1936), Japan (1972), and Russia (1976).⁴ In 1972, Congress expanded the MBTA to include thirty-two additional families of birds including eagles, hawks, owls, and corvids. Currently, the MBTA protects more than 1,000 species of native birds from unnecessary harm.⁵

Despite the passage of the MBTA, birds still face numerous threats from both natural and human-caused hazards such as habitat loss, climate change, entanglements, collisions with buildings and power lines, entrapments in oil pits, predation by other animals, and disease. For example, a 2014 study estimated that up to 57 million birds are killed each year from collisions with power lines in the United States.⁶ According to the U.S. Fish and Wildlife Service (FWS), uncovered oil pits and evaporation ponds account for up to one million bird deaths annually.⁷ Communication towers are also a large threat to birds, as they kill nearly 7 million birds a year in the United States and Canada.⁸

Many of these bird deaths could be avoided with simple modifications.⁹ A number of companies, including in the oil and electric utility sectors, have already developed and implemented best practices to protect birds, including covering oil pits and marking transmission lines. However, when companies fail to adopt these commonsense practices, the MBTA provides a critical tool for accountability by authorizing penalties, including in cases of “incidental take.”

“Take” refers to harm against an animal, including pursuing, wounding, killing, or capturing.¹⁰ Unlike purposeful take (such as hunting), incidental take results from a human activity that did not have the purpose of take. The 2010 BP Deepwater Horizon oil spill, which killed more than one million birds, is a prime example of how the MBTAs incidental take authority can be used to hold bad actors accountable for their actions. BP was ordered to pay \$100 million in fines under the MBTA—funds that were then used to restore important bird habitat.¹¹ Out of the 452 MBTA incidental take violations issued since the laws enactment (as of 2018), more than 92 percent were issued to the oil industry, and 97 percent of all fines involving incidental take are from the Exxon Valdez and BP *Deepwater Horizon* oil spills.¹²

³Ch. 128, § 2, 40 Stat. 755 (codified as amended as 16 U.S.C. § 703(a)).

⁴*Migratory Bird Treaty Act*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/birds/policies-and-regulations/laws-legislations/migratory-bird-treaty-act.php> (last updated Apr. 16, 2020).

⁵*Migratory Bird Treaty Act Protected Species (10.13 List)*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/birds/management/managed-species/migratory-bird-treaty-act-protected-species.php> (last updated Apr. 16, 2020).

⁶Scott R. Loss, Tom Will & Peter P. Marra, *Refining Estimates of Bird Collision and Electrocution Mortality at Power Lines in the United States*, 9(7) PLoS ONE e101565, at 1 (2014), available at <https://doi.org/10.1371/journal.pone.0101565>.

⁷*Entrapment, Entanglement & Drowning*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds/entrapment-entanglement-drowning.php> (last updated Nov. 30, 2018).

⁸Travis Longcore et al., *An Estimate of Avian Mortality at Communication Towers in the United States and Canada*, 7(4) PLoS ONE e34025, at 1 (2012), available at <https://doi.org/10.1371/journal.pone.0034025>.

⁹*See generally Threats to Birds*, U.S. FISH & WILDLIFE SERV., <https://www.fws.gov/birds/bird-enthusiasts/threats-to-birds.php> (last updated Sept. 14, 2018).

¹⁰50 C.F.R. § 10.12 (2019), <https://www.govinfo.gov/content/pkg/CFR-2019-title50-vol1-part10/pdf/CFR-2019-title50-vol1-part10.pdf>.

¹¹AUDUBON, *THE MBTA WORKS AND THE BIGGEST WINNERS ARE RENEWABLES 1* (2018), https://www.audubon.org/sites/default/files/audubon_mbt_a_industry_2018.pdf.

¹²*See id.* at 2.

For decades, under both Republican and Democratic administrations, FWS has interpreted the MBTA to cover incidental take. In 2015, building on the work that FWS had done with industries for decades to develop best practices for minimizing bird deaths, FWS began developing an incidental take permit process that would have provided regulatory certainty for industries while ensuring the conservation of birds.¹³ This process would have authorized industry sectors to incidentally take birds as long as certain permit conditions outlining best management practices were met. FWS considered proposing general permits for industry sectors that consistently take birds in the course of normal operations and whose conservation measures are well established, such as the oil and gas, communication, and transmission industries. The agency also considered proposing an individual permit system in which individual industrial operations not covered under the general permit could apply. The program would potentially have also created a regulatory mechanism to obtain compensatory mitigation for bird mortality that cannot be avoided or minimized through best practices.

However, in April 2017, the Trump administration withdrew the rulemaking for the permit process,¹⁴ and in December 2017 issued a reinterpretation of the MBTA. The new legal opinion states that the prohibitions on take under the MBTA cover only “actions that have as their purpose the taking or killing of migratory birds, their nests, or their eggs.”¹⁵ Subsequently, FWS issued guidance on the new legal opinion, informing industries that they are no longer required to avoid incidental harm to birds. This unprecedented move reversed decades of efforts by both Republican and Democratic administrations to conserve and protect native birds. FWS proposed a new rule in February 2020 to fully implement its new interpretation.¹⁶

This new interpretation of the MBTA removes industry incentives to engage with agencies and stakeholders on actions that reduce harm to birds and absolves industries of accountability for actions that kill birds. The interpretation removes a critical legal tool used to recover natural resource damages from environmental disasters. This dramatic new approach also does not uphold the United States commitments under the various international migratory bird treaties to which it is a party and, as such, is in violation of international law. According to diplomatic notes obtained from the State Department under a Freedom of Information Act request, Canada and the United States had recently reconfirmed their shared understanding that the migratory bird treaty between the two nations does in fact cover incidental take.¹⁷

The Migratory Bird Protection Act legislatively affirms that the MBTAs prohibition on the unauthorized take or killing of migratory birds includes incidental take by industrial activities and di-

¹³ Migratory Bird Permits, 80 Fed. Reg. 30,032 (May 26, 2015), <https://www.gpo.gov/fdsys/pkg/FR-2015-05-26/pdf/2015-12666.pdf>.

¹⁴ See OIRA Unified Agenda Spring 2017, RIN 1018-BA69, <https://www.reginfo.gov/public/do/eAgendaViewRule?pubId=201704&RIN=1018-BA69>.

¹⁵ Memorandum from Daniel H. Jorjani, Principal Deputy Solicitor, U.S. Dep’t of the Interior, at 2 (Dec. 22, 2017), <https://www.doi.gov/sites/doi.gov/files/uploads/m-37050.pdf> (M-37050, “The Migratory Bird Treaty Act Does Not Prohibit Incidental Take”).

¹⁶ Regulations Governing Take of Migratory Birds, 85 Fed. Reg. 5915 (Feb. 3, 2020), <https://www.govinfo.gov/content/pkg/FR-2020-02-03/pdf/2020-01771.pdf>.

¹⁷ On file with the House Committee on Natural Resources.

rects FWS to establish a regulatory permitting program that covers such incidental take.

The bill's voluntary permitting program relies principally on general permits that incentivize the adoption of best management practices and reasonably available technologies that avoid or reduce avian mortality at a reasonable cost while providing a conservation benefit for migratory birds. This system provides a series of general or nationwide permits to industry sectors known to affect migratory birds, including oil and gas, electric, wind, and solar energy operations. For each industry sector, the bill instructs FWS to create a general permit with two basic requirements: (1) adherence to specified best management practices or adoption of technologies that minimize avian mortality; and (2) a mitigation fee for avian mortality that results. To obtain a permit, the applicant would self-certify with FWS along with proof of payment of the mitigation fee, which would be determined by FWS based on typical impacts to migratory birds and the costs of habitat restoration or other appropriate compensatory measures. Individual review of permits would not be required for eligibility except for industries that currently lack accepted best management practices or participate in high-risk activities. Permits would not exceed 10 years and would be eligible for renewal through self-certification of adherence to the permit conditions applicable at the time of renewal. FWS would reserve the right to reopen permits during their 10-year term for significantly changed circumstances.

The bill requires permit holders to maintain records demonstrating compliance, subject to inspection by FWS. Violations of the substantive terms and conditions of general and individual permits, such as failing to adopt required best management practices, deprive the permit holder of coverage for incidental take that results from activities covered by the permit and such take would be criminally punishable under the MBTA. FWS may revoke a permit for violations.

The bill also requires FWS to establish, by rulemaking, categories of commercial activities that constitute "de minimis" activities exempt from liability.

Mitigation fees paid under the permit programs are directed to the North American Wetlands Conservation Act Fund, the Neotropical Migratory Bird Conservation Act Fund, or other programs that mitigate the impact of activities to birds.

COMMITTEE ACTION

On June 13, 2019, the Subcommittee on Water, Oceans, and Wildlife held a hearing on a discussion draft of the bill. H.R. 5552 was introduced on January 8, 2020, by Representative Alan Lowenthal (D-CA). The bill was referred solely to the Committee on Natural Resources, where it was held at full committee. On January 15, 2020, the Natural Resources Committee met to consider the bill. Representative Garret Graves (R-LA) offered an amendment designated Graves #1. The amendment was agreed to by voice vote. Representative Paul Gosar (R-AZ) offered an amendment designated Gosar #1. The amendment was not agreed to by a roll call vote of 13 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #1 amendment

Disposition: Not agreed to by a roll call vote of 13 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. García, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA			
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	13	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #3. The amendment was not agreed to by a roll call vote of 13 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #3 amendment

Disposition: Not agreed to by a roll call vote of 13 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA			
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	13	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #4. The amendment was not agreed to by a roll call vote of 13 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #4 amendment

Disposition: Not agreed to by a roll call vote of 13 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grjvalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA			
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	13	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #5. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #5 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. García, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #6. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #6 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #7. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #7 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #8. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #8 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #9. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #9 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #10. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #10 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #11. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #11 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. García, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #12. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #12 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. Garcia, IL		X	
12	Mr. Grijalva, AZ (<i>Chair</i>)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #13. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #13 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. García, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

Representative Gosar offered an amendment designated Gosar #14. The amendment was not agreed to by a roll call vote of 14 yeas and 20 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment: Rep. Gosar #14 amendment

Disposition: Not agreed to by a roll call vote of 14 yeas and 20 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD		X	
2	Mr. Cartwright, PA		X	
3	Mr. Case, HI		X	
4	Mr. Clay, MO			
5	Mr. Costa, CA		X	
6	Mr. Cox, CA		X	
7	Mr. Cunningham, SC		X	
8	Ms. DeGette, CO		X	
9	Mrs. Dingell, MI		X	
10	Mr. Gallego, AZ		X	
11	Mr. García, IL		X	
12	Mr. Grijalva, AZ (Chair)		X	
13	Ms. Haaland, NM		X	
14	Mr. Horsford, NV			
15	Mr. Huffman, CA		X	
16	Mr. Levin, CA		X	
17	Mr. Lowenthal, CA		X	
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA		X	
20	Mr. Neguse, CO		X	
21	Mr. Sablan, CNMI		X	
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL		X	
24	Mr. Tonko, NY		X	
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (Ranking)	X		
2	Ms. Cheney, WY			
3	Mr. Cook, CA	X		
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID	X		
6	Mr. Gohmert, TX	X		
7	Ms. González-Colón, PR	X		
8	Mr. Gosar, AZ	X		
9	Mr. Graves, LA	X		
10	Mr. Hern, OK	X		
11	Mr. Hice, GA	X		
12	Mr. Johnson, LA	X		
13	Mr. Lamborn, CO	X		
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL	X		
17	Mr. Westerman, AR	X		
18	Mr. Wittman, VA	X		
19	Mr. Young, AK			
	TOTALS	14	20	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

No additional amendments were offered. The bill, as amended, was adopted and ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 14 nays, as follows:

Date: January 15, 2020

COMMITTEE ON NATURAL RESOURCES
116th Congress - Roll Call

Bill / Motion: H.R. 5552

Amendment:

Disposition: Final Passage: H.R. 5552, as amended, was ordered favorably reported to the House of Representatives by a roll call vote of 20 yeas and 14 nays.

	DEM. MEMBERS (25)	YEAS	NAYS	PRESENT
1	Mr. Brown, MD	X		
2	Mr. Cartwright, PA	X		
3	Mr. Case, HI	X		
4	Mr. Clay, MO			
5	Mr. Costa, CA	X		
6	Mr. Cox, CA	X		
7	Mr. Cunningham, SC	X		
8	Ms. DeGette, CO	X		
9	Mrs. Dingell, MI	X		
10	Mr. Gallego, AZ	X		
11	Mr. Grijalva, AZ (<i>Chair</i>)	X		
12	Mr. Garcia, IL	X		
13	Ms. Haaland, NM	X		
14	Mr. Horsford, NV			
15	Mr. Huffman, CA	X		
16	Mr. Levin, CA	X		
17	Mr. Lowenthal, CA	X		
18	Mr. McEachin, VA			
19	Ms. Napolitano, CA	X		
20	Mr. Neguse, CO	X		
21	Mr. Sablan, CNMI	X		
22	Mr. San Nicolas, GU			
23	Mr. Soto, FL	X		
24	Mr. Tonko, NY	X		
25	Ms. Velázquez, NY			
26				
	REP. MEMBERS (19)	Y	N	P
1	Mr. Bishop, UT (<i>Ranking</i>)		X	
2	Ms. Cheney, WY			
3	Mr. Cook, CA		X	
4	Mr. Curtis, UT			
5	Mr. Fulcher, ID		X	
6	Mr. Gohmert, TX		X	
7	Ms. González-Colón, PR		X	
8	Mr. Gosar, AZ		X	
9	Mr. Graves, LA		X	
10	Mr. Hern, OK		X	
11	Mr. Hice, GA		X	
12	Mr. Johnson, LA		X	
13	Mr. Lamborn, CO		X	
14	Mr. McClintock, CA			
15	Mrs. Radewagen, AS			
16	Mr. Webster, FL		X	
17	Mr. Westerman, AR		X	
18	Mr. Wittman, VA		X	
19	Mr. Young, AK			
	TOTALS	20	14	
	Total: 43 / Quorum: 14 / Report: 22	YEAS	NAYS	PRESENT

HEARINGS

For the purposes of section 103(i) of H. Res. 6 of the 116th Congress—the following hearing was used to develop or consider H.R. 5552: legislative hearing by the Subcommittee on Water, Oceans, and Wildlife held on June 13, 2019.

SECTION-BY-SECTION ANALYSIS

*Section 1. Short title**Section 2. Amendments to the Migratory Bird Treaty Act*

This section amends Section 2 of the MBTA to insert “incidentally take” into the list of prohibited acts. It also amends the penalties section of the MBTA (Section 6) to allow for civil penalties if someone violates the incidental take prohibition of the MBTA or violates the terms of a permit. This provides greater flexibility for appropriate enforcement, as the penalties in current law are solely criminal.

The section adds a new section (Section 14) to the MBTA to prescribe a permitting program to be carried out by FWS to provide general and individual permits for incidental take by commercial activities.

General permits: FWS is directed to develop and issue general permits for specific industries and industrial activities, such as wind facilities, electric transmission lines, and communication towers. These general permits would allow for self-certification by an operator and would prescribe mitigation measures such as best management practices and technologies, a mitigation fee, and permit application fee. The general permit could be revised every 10 years or if new best management practices are developed. The permit could also be revised if the extent of incidental take is significantly different from what FWS expected when they issued the general permit. Timelines would be set for FWS to finalize the permit. A person who self-certifies, pays the mitigation and permit fees, and employs best management practices would be covered by the permit for 10 years.

Interim coverage: To provide for safe harbor from prosecution for any incidental take before the issuance of a permit, FWS is directed to develop a simple interim coverage program that consists of a mitigation fee and self-certification that a facility has done what it can to minimize the incidental take of migratory birds. This interim coverage does not apply to gross negligence.

Individual permits: For any facilities or operations for which a general permit does not apply or is not being developed, an individual permit can be provided. These permits would include requirements for mitigation measures, including best management practices and technology, and mitigation and permit fees.

De minimis activities: FWS must issue a rule identifying commercial activities that are exempt from liability for incidental take because they do not pose appreciable risks to migratory birds.

Mitigation fee use: FWS is directed to deposit the mitigation fees into funds that mitigate the impacts of the permitted activities to migratory birds, including the North American Wetlands Fund and the Neotropical Migratory Bird Conservation Fund.

Authorization of appropriations: \$10,000,000 is authorized for each fiscal year for FWS to carry out the permitting programs.

Report to Congress: FWS shall submit a report to Congress every five years on the conservation status of migratory birds and the impacts and effectiveness of the permit programs.

Research program: FWS shall establish a research program for evaluating best management practices and the impacts of commercial activities on migratory birds. This program is funded by the application fees of the permit programs.

This section also adds a new definitions section (Section 15) to the MBTA to define terms such as “incidental take,” “commercial activity,” and “best management practices.”

COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

Regarding clause 2(b)(1) of rule X and clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee on Natural Resources oversight findings and recommendations are reflected in the body of this report.

COMPLIANCE WITH HOUSE RULE XIII AND CONGRESSIONAL BUDGET ACT

1. *Cost of Legislation and the Congressional Budget Act.* With respect to the requirements of clause 3(c)(2) and (3) of rule XIII of the Rules of the House of Representatives and sections 308(a) and 402 of the Congressional Budget Act of 1974, the Committee has received the following estimate for the bill from the Director of the Congressional Budget Office:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 30, 2020.

Hon. RAÚL M. GRIJALVA,
*Chairman, Committee on Natural Resources,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 5552, the Migratory Bird Protection Act of 2020.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Janani Shankaran.

Sincerely,

PHILLIP L. SWAGEL,
Director.

Enclosure.

At a Glance			
H.R. 5552, Migratory Bird Protection Act of 2020			
As ordered reported by the House Committee on Natural Resources on January 15, 2020			
By Fiscal Year, Millions of Dollars	2020	2020-2025	2020-2030
Direct Spending (Outlays)	0	-126	-251
Revenues	0	*	*
Increase or Decrease (-) in the Deficit	0	-126	-251
Spending Subject to Appropriation (Outlays)	*	56	106
Statutory pay-as-you-go procedures apply?	Yes	Mandate Effects	
Increases on-budget deficits in any of the four consecutive 10-year periods beginning in 2030?	No	Contains intergovernmental mandate?	Yes, Over Threshold
		Contains private-sector mandate?	Yes, Over Threshold
* = between zero and \$500,000			

The bill would

- Prohibit the incidental killing or taking of migratory birds by commercial activities without a permit
- Authorize the appropriation of \$10 million annually for the U.S. Fish and Wildlife Service to develop a permitting program
- Establish fees for those permits and for migratory bird habitat restoration
- Establish a civil penalty for related violations

Estimated budgetary effects would primarily stem from

- Collection of the new fees
- Spending of the authorized amounts

Areas of significant uncertainty include

- Projecting the number of entities that would be required to obtain a permit under the bill
- Predicting how the permit program and fees would be structured

Bill summary: H.R. 5552 would prohibit the incidental take of migratory birds by commercial activities without a permit. (Incidental take means the killing or taking of migratory birds as the indirect result of, but not for the purpose of, commercial activity.) The bill would create a permitting program, establish fees for permit holders, and authorize annual appropriations of \$10 million each year for the U.S. Fish and Wildlife Service (USFWS) to develop the program. In addition, the bill would establish a civil penalty for violations of the terms of a permit issued by USFWS.

Estimated Federal cost: The estimated budgetary effect of H.R. 5552 is shown in Table 1. The costs of the legislation fall within budget function 300 (natural resources and environment).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 5552

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030
	Decreases in Direct Spending												
Estimated Budget Authority ...	0	–25	–25	–25	–25	–26	–25	–25	–25	–25	–25	–126	–251

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 5552—Continued

	By fiscal year, millions of dollars—												
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030
Estimated Out-lays	0	–25	–25	–25	–25	–26	–25	–25	–25	–25	–25	–126	–251
Increases in Spending Subject to Appropriation													
Authorization	10	10	10	10	10	10	10	10	10	10	10	60	110
Estimated Out-lays	*	16	10	10	10	10	10	10	10	10	10	56	106

CBO estimates that enacting H.R. 5552 would increase revenues by an insignificant amount over the 2020–2030 period.

* = between zero and \$500,000.

Basis of estimate: For this estimate, CBO assumes that the legislation will be enacted late in fiscal year 2020 and that the authorized amounts will be appropriated in each year. Under that assumption, the agency could incur some costs in 2020, but CBO expects that most of the costs would be incurred in 2021 and later.

Direct spending and revenues: CBO estimates that enacting H.R. 5552 would reduce direct spending by \$251 million over the 2020–2030 period and increase revenues by an insignificant amount.

Permit and mitigation Fees: H.R. 5552 would direct USFWS to establish two fees: a permit fee to cover the cost to administer the incidental take permit program, and an annual mitigation fee for the incidental take of migratory birds. Those fees would be classified as offsetting receipts and recorded in the budget as reductions in direct spending. Under the bill, fees would be deposited into existing funds for North American and neotropical bird habitat conservation. Spending of those fees would be subject to appropriation.

The bill would focus on certain industries for permitting, including oil and gas extraction, electric power transmission and distribution, wind and solar power generation, and communication towers. Using information from the 2017 Economic Census and from USFWS, CBO estimates that between several thousand and 15,000 entities would seek incidental take permits under the bill. Based on other USFWS fees, CBO estimates that each entity would pay \$100 per permit. H.R. 5552 would direct USFWS to issue permits within five years of enactment; thus, we expect that the agency would collect most of the permit fees, which would total about \$1 million, in 2025.

Using information from USFWS and industry experts on the typical costs for habitat restoration, and based on similar fees for the take of eagles, CBO estimates that each permitted entity would pay, on average, several thousand dollars annually in mitigation fees starting in 2021. We estimate that the federal government would collect about \$25 million annually starting in 2021 and, in total, \$251 million over the 2020–2030 period.

Penalties: H.R. 5552 would establish a civil penalty, which would be recorded in the budget as a revenue, for violations of the terms of an incidental take permit issued by USFWS. The bill also would expand the application of existing penalties under the Migratory Bird Treaty Act (MBTA). CBO estimates that violations would occur infrequently; thus, the increase in revenues would be insignificant over the 2020–2030 period.

Under current law, fines and penalties collected under the MBTA are available for USFWS to spend without further appropriation

for bird habitat conservation. CBO estimates that the spending of additional penalties collected under the bill would be insignificant over the 2020–2030 period.

Spending subject to appropriation: H.R. 5552 would authorize the annual appropriation of \$10 million for USFWS to develop a permitting program for the incidental take of migratory birds and to conduct related research. Based on historical spending patterns for similar activities, CBO estimates that implementing H.R. 5552 would cost \$56 million over the 2020–2025 period.

Uncertainty: The estimate of fee collections is uncertain and could be higher or lower than CBO estimates. CBO cannot predict with certainty the number of entities that would apply for an incidental take permit under the bill. CBO also cannot foresee how USFWS would structure the program or set the amount of mitigation fees, leading to a wide range of estimates.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays and revenues that are subject to those pay-as-you-go procedures are shown in Table 2. The increase in revenues would be insignificant.

TABLE 2.—CBO'S ESTIMATE OF THE STATUTORY PAY-AS-YOU-GO EFFECTS OF H.R. 5552, THE MIGRATORY BIRD PROTECTION ACT OF 2020, AS ORDERED REPORTED BY THE HOUSE COMMITTEE ON NATURAL RESOURCES ON JANUARY 15, 2020

	By fiscal year, millions of dollars—													
	2020	2021	2022	2023	2024	2025	2026	2027	2028	2029	2030	2020–2025	2020–2030	
	Net Decrease in the Deficit													
Pay-As-You-Go Effect	0	– 25	– 25	– 25	– 25	– 26	– 25	– 25	– 25	– 25	– 25	– 126	– 251	

Increase in long-term deficits: None.

Mandates: H.R. 5552 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates of \$84 million and \$168 million, respectively, in 2020 (adjusted annually for inflation).

By prohibiting the incidental take of migratory birds, H.R. 5552 would impose mandates on industries where incidental takings are high such as communication and wind-generation towers. The bill would establish a permitting program to regulate the newly prohibited activities. To take advantage of a permit, affected entities would be required to pay a permit fee and an annual mitigation fee, implement best practices to reduce or avoid incidental take, and meet new reporting requirements.

CBO estimates that approximately 7,500 entities, both public and private, would participate in the permitting process and pay the required fees, which would total about \$25 million per year in the first five years the mandate would be in effect.

Participating entities also would be required to use best practices to minimize or avoid incidental take of migratory birds. According to USFWS and environmental law experts, some of the mandated

entities already implement such practices either voluntarily or in meeting other legal requirements. Because the MBTA protects over one thousand species of birds, and the mandated entities implement thousands of projects each year, CBO estimates enacting the bill would result in a substantial cost for both private and public entities.

Estimate prepared by: Federal costs: Janani Shankaran; Mandates: Lilia Ledezma.

Estimate reviewed by: Susan Willie, Chief, Natural and Physical Resources Cost Estimates Unit; H. Samuel Papenfuss, Deputy Director of Budget Analysis; Theresa Gullo, Director of Budget Analysis.

2. *General Performance Goals and Objectives.* As required by clause 3(c)(4) of rule XIII, the general performance goals and objectives of this bill are to amend the Migratory Bird Treaty Act to affirm that the Migratory Bird Treaty Acts prohibition on the unauthorized take or killing of migratory birds includes incidental take by commercial activities, and to direct the United States Fish and Wildlife Service to regulate such incidental take.

EARMARK STATEMENT

This bill does not contain any Congressional earmarks, limited tax benefits, or limited tariff benefits as defined under clause 9(e), 9(f), and 9(g) of rule XXI of the Rules of the House of Representatives.

UNFUNDED MANDATES REFORM ACT STATEMENT

According to CBO, H.R. 5552 would impose intergovernmental and private-sector mandates as defined in the Unfunded Mandates Reform Act (UMRA). CBO estimates that the aggregate cost of complying with the mandates would exceed the annual thresholds established in UMRA for intergovernmental and private-sector mandates of \$84 million and \$168 million, respectively, in 2020 (adjusted annually for inflation). CBO's full analysis is reproduced above.

EXISTING PROGRAMS

This bill does not establish or reauthorize a program of the federal government known to be duplicative of another program.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

PREEMPTION OF STATE, LOCAL, OR TRIBAL LAW

Any preemptive effect of this bill over state, local, or tribal law is intended to be consistent with the bill's purposes and text and the Supremacy Clause of Article VI of the U.S. Constitution.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

MIGRATORY BIRD TREATY ACT

* * * * *

SEC. 2. (a) IN GENERAL.—Unless and except as permitted by regulations made as hereinafter provided, it shall be unlawful at any time, by any means or in any manner, to pursue, hunt, take, capture, kill, *incidentally take*, attempt to take, capture, or kill, possess, offer for sale, sell, offer to barter, barter, offer to purchase, purchase, deliver for shipment, ship, export, import, cause to be shipped, exported, or imported, deliver for transportation, transport or cause to be transported, carry or cause to be carried, or receive for shipment, transportation, carriage, or export, any migratory bird, any part, nest, or egg of any such bird, or any product, whether or not manufactured, which consists, or is composed in whole or part, of any such bird or any part, nest, or egg thereof, included in the terms of the conventions between the United States and Great Britain for the protection of migratory birds concluded August 16, 1916, the United States and the United Mexican States for the protection of migratory birds and game mammals concluded February 7, 1936, the United States and the Government of Japan for the protection of migratory birds and birds in danger of extinction, and their environment concluded March 4, 1972 and the convention between the United States and the Union of Soviet Socialist Republics for the conservation of migratory birds and their environments concluded November 19, 1976.

(b) LIMITATION ON APPLICATION TO INTRODUCED SPECIES.—

(1) IN GENERAL.—This Act applies only to migratory bird species that are native to the United States or its territories.

(2) NATIVE TO THE UNITED STATES DEFINED.—

(A) IN GENERAL.—Subject to subparagraph (B), in this subsection the term “native to the United States or its territories” means occurring in the United States or its territories as the result of natural biological or ecological processes.

(B) TREATMENT OF INTRODUCED SPECIES.—For purposes of paragraph (1), a migratory bird species that occurs in the United States or its territories solely as a result of intentional or unintentional human-assisted introduction shall not be considered native to the United States or its territories unless—

(i) it was native to the United States or its territories and extant in 1918;

(ii) it was extirpated after 1918 throughout its range in the United States and its territories; and

(iii) after such extirpation, it was reintroduced in the United States or its territories as a part of a program carried out by a Federal agency.

SEC. 3. (a) That subject to the provisions and in order to carry out the purposes of the conventions, the Secretary [of Agriculture] is authorized and directed, from time to time, having due regard to the zones of temperature and to the distribution, abundance, economic value, breeding habits, and times and lines of migratory flight of such birds, to determine when, to what extent, if at all, and by what means, it is compatible with the terms of the conventions to allow hunting, taking, capture, killing, possession, sale, purchase, shipment, transportation, carriage, or export of any such bird, or any part, nest, or egg thereof, and to adopt suitable regulations permitting and governing the same, in accordance with such determinations, which regulations shall become effective when approved by the President.

(b) It shall be unlawful for any person to—

(1) take any migratory game bird by the aid of baiting, or on or over any baited area, if the person knows or reasonably should know that the area is a baited area; or

(2) place or direct the placement of bait on or adjacent to an area for the purpose of causing, inducing, or allowing any person to take or attempt to take any migratory game bird by the aid of baiting on or over the baited area.

(c) FEDERAL FRAMEWORK CLOSING DATE FOR HUNTING OF DUCKS, MERGANSERS, AND COOTS.—

(1) REGULATIONS RELATING TO FRAMEWORK CLOSING DATE.—

(A) IN GENERAL.—In promulgating regulations under subsection (a) relating to the Federal framework for the closing date up to which the States may select seasons for migratory bird hunting, except as provided in paragraph (2), the Secretary shall, with respect to the hunting season for ducks, mergansers, and coots—

(i) subject to subparagraph (B), adopt the recommendation of each respective flyway council (as defined in section 20.152 of title 50, Code of Federal Regulations) for the Federal framework if the Secretary determines that the recommendation is consistent with science-based and sustainable harvest management; and

(ii) allow the States to establish the closing date for the hunting season in accordance with the Federal framework.

(B) REQUIREMENT.—The framework closing date promulgated by the Secretary under subparagraph (A) shall not be later than January 31 of each year.

(2) SPECIAL HUNTING DAYS FOR YOUTHS, VETERANS, AND ACTIVE MILITARY PERSONNEL.—

(A) IN GENERAL.—Notwithstanding the Federal framework closing date under paragraph (1) and subject to subparagraphs (B) and (C), the Secretary shall allow States to select 2 days for youths and 2 days for veterans (as defined in section 101 of title 38, United States Code) and members of the Armed Forces on active duty, including members of the National Guard and Reserves on active duty (other than for training), to hunt eligible ducks, geese, swans, mergansers, coots, moorhens, and gallinules, if the Secretary determines that the addition of those days is

consistent with science-based and sustainable harvest management. Such days shall be treated as separate from, and in addition to, the annual Federal framework hunting season lengths.

(B) REQUIREMENTS.—In selecting days under subparagraph (A), a State shall ensure that—

(i) the days selected—

(I) may only include the hunting of duck, geese, swan, merganser, coot, moorhen, and gallinule species that are eligible for hunting under the applicable annual Federal framework;

(II) are not more than 14 days before or after the Federal framework hunting season for ducks, mergansers, and coots; and

(III) are otherwise consistent with the Federal framework; and

(ii) the total number of days in a hunting season for any migratory bird species, including any days selected under subparagraph (A), is not more than 107 days.

(C) LIMITATION.—A State may combine the 2 days allowed for youths with the 2 days allowed for veterans and members of the Armed Forces on active duty under subparagraph (A), but in no circumstance may a State have more than a total of 4 additional days added to its regular hunting season for any purpose.

(3) REGULATIONS.—The Secretary shall promulgate regulations in accordance with this subsection for the Federal framework for migratory bird hunting for the 2019–2020 hunting season and each hunting season thereafter.

* * * * *

SEC. 5. That any employee of the Department of [Agriculture authorized by the Secretary of Agriculture] *Interior authorized by the Secretary* to enforce the provisions of this Act shall have power, without warrant, to arrest any person committing a violation of this Act in his presence or view and to take such person immediately for examination or trial before an officer or court of competent jurisdiction; shall have power to execute any warrant or other process issued by an officer or court of competent jurisdiction for the enforcement of the provisions of this Act; and shall have authority, with a search warrant, to search any place. The several judges of the courts established under the laws of the United States, and United States commissioners may, within their respective jurisdictions, upon proper oath or affirmation showing probable cause, issue warrants in all such cases. All birds, or parts, nests, or eggs thereof, captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder shall, when found, be seized and, upon conviction of the offender or upon judgment of a court of the United States that the same were captured, killed, taken, sold or offered for sale, bartered or offered for barter, purchased, shipped, transported, carried, imported, exported, or possessed contrary to the provisions of this Act or of any regulation prescribed thereunder, shall be forfeited to the United States and

disposed of by the Secretary [of the Interior] in such manner as he deems appropriate.

SEC. 6. (a) Except as otherwise provided in this section, any person, association, partnership, or corporation who shall violate any provisions of said conventions or of this Act, or who shall violate or fail to comply with any regulation made pursuant to this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than \$15,000 or be imprisoned not more than six months, or both.

(b) Whoever, in violation of this Act, shall knowingly—

(1) take by any manner whatsoever any migratory bird with intent to sell, offer to sell, barter or offer to barter such bird, or

(2) sell, offer for sale, barter or offer to barter, any migratory bird shall be guilty of a felony and shall be fined not more than \$2,000 or imprisoned not more than two years, or both.

(c) Whoever violates section 3(b)(2) shall be fined under title 18, United States Code, imprisoned not more than 1 year, or both.

(d) All guns, traps, nets and other equipment, vessels, vehicles, and other means of transportation used by any person when engaged in pursuing, hunting, taking, trapping, ensnaring, capturing, killing, or attempting to take, capture, or kill any migratory bird in violation of this Act with the intent to offer for sale, or sell, or offer for barter, or barter such bird in violation of this Act shall be forfeited to the United States and may be seized and held pending the prosecution of any person arrested for violating this Act and upon conviction for such violation, such forfeiture shall be adjudicated as a penalty in addition to any other provided for violation of this Act. Such forfeited property shall be disposed of and accounted for by, and under the authority of, the Secretary [of the Interior].

(e) Whoever in violation of this Act, shall incidentally take a migratory bird or violate the terms of a permit or any rule issued by the Secretary to administer section 14 of this Act may be assessed a civil penalty by the Secretary of not more than \$10,000 per violation, except that unpermitted incidental take which is caused by conduct that is reckless or grossly negligent shall be subject to the penalties of subsection (a). The Secretary is authorized to commence a civil action for appropriate relief, including a permanent or temporary injunction, for any violation of the terms of a permit or regulation issued under such section.

* * * * *

SEC. 9. That there is authorized to be appropriated, from time to time, out of any money in the Treasury not otherwise appropriated, such amounts as may be necessary to carry out the provisions and to accomplish the purposes of said conventions and this Act and regulations made pursuant thereto, and the Secretary [of Agriculture] is authorized out of such moneys to employ in the city of Washington and elsewhere such persons and means as he may deem necessary for such purpose and may cooperate with local authorities in the protection of migratory birds and make the necessary investigations connected therewith.

* * * * *

SEC. 14. INCIDENTAL TAKE OF MIGRATORY BIRDS.

(a) *IN GENERAL.*—It shall be a violation of this Act for any person to incidentally take a migratory bird as a result of a commercial activity except as authorized by this section and regulations issued pursuant to this section.

(b) *GENERAL PERMITS.*—The Secretary shall regulate the incidental take of migratory birds as a result of commercial activity by issuing general permits for particular industries, as identified by standard industrial classification, that the Secretary determines have broadly similar levels of incidental take and for which generally applicable best management practices or technologies exist that can effectively avoid or minimize such impacts. With respect to each such industry, the Secretary shall, based on the best available science—

(1) identify the commercial activity covered by the regulation;

(2) specify appropriate mitigation to be implemented by a person seeking coverage under a general permit, including adoption of best management practices or technologies that the Secretary has determined are practicable and effective in avoiding or minimizing the incidental take of migratory birds as a result of such commercial activity;

(3) specify a mitigation fee in an amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from such commercial activity; and

(4) specify a permit fee in an amount that the Secretary determines is sufficient to offset the cost of developing and revising such regulations and administering the research program established under subsection (s).

(c) *REVISION OF GENERAL PERMITS.*—The Secretary shall revise a general permit issued under subsection (b) if such Secretary determines that revision is appropriate, or if—

(1) the extent or nature of the incidental take of migratory birds caused by the commercial activity covered by the regulation is significantly different than the extent or nature of such incidental take that formed the basis of the regulation;

(2) new best management practices or technologies can significantly reduce such incidental take and can practicably be adopted by the persons engaged in such commercial activity; or

(3) such permit has not been revised in the 10 year period beginning on the date such permit was issued.

(d) *CONSULTATION.*—The Secretary shall, before issuing a general permit under subsection (b), consult with persons engaged in the industry to which such permit would apply and other interested stakeholders and afford such persons an opportunity to submit relevant information.

(e) *PRIORITY GENERAL PERMITS.*—

(1) *IN GENERAL.*—The Secretary shall give priority to development of general permits with respect to industries for which substantial information exists regarding the extent and nature of incidental take of migratory birds caused by such industry and the efficacy and practicability of best management practices and technologies in reducing such incidental take.

(2) *COMMERCIAL ACTIVITIES WITH SPECIFIC DEADLINES.*—The Secretary shall issue general permits under subsection (b)—

(A) not later than 5 years after the date of enactment of this Act with respect to—

- (i) oil, gas, and wastewater disposal pits;
- (ii) methane and other gas burner pipes;
- (iii) communication towers;
- (iv) electric transmission and distribution lines; and
- (v) wind power generation facilities; and

(B) not later than 8 years after the date of enactment for this Act with respect to solar powered generation facilities.

(f) *MITIGATION FEE.*—The mitigation fee for each general permit shall be the amount that the Secretary determines reasonably compensates, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from the covered commercial activity after the application of any mitigation measures specified by the Secretary under subsection (b)(2). Such determination shall be, to the maximum extent practicable, based on objective and standardized metrics such as the size or capacity of a facility for which a person seeks coverage.

(g) *ENDANGERED SPECIES ACT OF 1973 AND NATIONAL ENVIRONMENTAL POLICY ACT.*—Before issuing a general permit pursuant to subsection (b), the Secretary shall consult the United States Fish and Wildlife Service and the National Marine Fisheries Service pursuant to section 7(a)(2) of the Endangered Species Act of 1973 (16 U.S.C. 1536(a)(2)), and prepare an Environmental Impact Statement pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)).

(h) *PERSONS SEEKING AUTHORIZATION FOR INCIDENTAL TAKE.*—Except as provided in subsection (i), a person is authorized to incidentally take migratory birds if such person is engaged in a commercial activity with respect to which a general permit has been issued under subsection (b) and such person—

(1) notifies the Secretary in writing that such person is accepting coverage under such permit;

(2) annually certifies, in writing, to the Secretary that such person is in compliance with this Act and maintains records demonstrating such compliance;

(3) adopts each best management practice or technology specified by the Secretary under subsection (b)(2);

(4) pays the mitigation fee specified by the Secretary under subsection (b)(3) at the time such person notifies the Secretary pursuant to paragraph (1), and annually thereafter; and

(5) pays the permit fee specified by the Secretary under subsection (b)(4) at the time such person notifies the Secretary pursuant to paragraph (1).

(i) *VIOLATION OF TERMS OF GENERAL PERMIT.*—The Secretary shall end the coverage of a person under a general permit if such person does not fulfill the requirements to maintain such permit under subsection (h).

(j) *DURATION OF COVERAGE UNDER A GENERAL PERMIT.*—Except as provided in subsection (i), a person authorized to take migratory birds pursuant to a general permit shall be subject to the terms of such general permit for a period of ten years beginning on the date

such person is first authorized for such take, irrespective of different terms in a subsequently issued general permit.

(k) **PLATFORM FOR EFFICIENT CERTIFICATION.**—The Secretary shall establish a web-based platform or other efficient mechanism for persons to file a certification and pay the fees required by subsection (h) without requiring individualized review.

(l) **INTERIM COVERAGE FOR COMMERCIAL ACTIVITIES PROPOSED FOR A GENERAL PERMIT.**—

(1) **COMMERCIAL ACTIVITY WITH A SPECIFIED DEADLINE.**—Persons or entities engaged in commercial activities listed in subsection (e)(2) shall, upon payment of a mitigation fee in an amount determined under paragraph (3) and submission of a certification of compliance to the Secretary in accordance with this subsection, be exempt from liability for incidental take caused by such commercial activities until the earlier of—

(A) the issuance of a general permit covering such commercial activity under subsection (b); or

(B) with respect to—

(i) an activity described in subsection (e)(2)(A), the date that is 5 years after the date of enactment of this section; or

(ii) an activity described in subsection (e)(2)(B), the date that is 8 years after the date of enactment of this section.

(2) **COMMERCIAL ACTIVITY FOR WHICH THE SECRETARY HAS GIVEN NOTICE OF INTENT TO ISSUE A PERMIT.**—A person engaged in a commercial activity for which the Secretary has given notice in the Federal Register of intent to issue a general permit under subsection (b) shall, upon payment of a mitigation fee in an amount determined under paragraph (3) and submission of a certification of compliance to the Secretary in accordance with this subsection, be exempt from liability for incidental take caused by such commercial activities until the earlier of—

(A) the date that is 5 years after the date of issuance of such notice; or

(B) the issuance of such regulation.

(3) **MITIGATION FEE.**—The amount of the mitigation fee required by paragraph (1) and (2) shall be the amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from the relevant commercial activity.

(4) **CERTIFICATION OF MITIGATION MEASURES.**—A person seeking interim coverage under this subsection shall submit to the Secretary a certification identifying any measures such person has taken to minimize incidental take of migratory birds resulting from the commercial activity for which such person is seeking interim coverage and committing to continue such measures for the duration of the interim coverage.

(5) **RECKLESS OR GROSSLY NEGLIGENT CONDUCT.**—The exemption from liability for commercial activities receiving interim coverage under this subsection shall not extend to incidental take that is caused by conduct that is reckless or grossly negligent.

(m) *INDIVIDUAL PERMITS.*—The Secretary may provide a permit on an individual basis to incidentally take migratory birds to a person engaged in a commercial activity for which authorizing regulations have not been issued. Each individual permit shall—

(1) identify the commercial activity to which the permit applies;

(2) specify the duration of the permit, not to exceed 10 years;

(3) specify the amount and nature of incidental take authorized by the permit;

(4) specify best management practices or technologies that the Secretary has determined are practicable and effective in avoiding or minimizing the incidental take of migratory birds by such commercial activity;

(5) specify a mitigation fee in an amount the Secretary determines is sufficient to reasonably compensate, through habitat restoration or other appropriate measures, for any incidental take of migratory birds that results from such commercial activity;

(6) specify a permit fee, to be paid at the time such person submits a certification to the Secretary pursuant to paragraph (7), to offset the cost of developing and revising such permit and administering the research program established under subsection (s);

(7) require such person to submit to the Secretary an annual certification demonstrating such person's compliance with the terms of the permit;

(8) provide for the terms of the permit to be revised during the duration of such permit if new information indicates that—

(A) the extent or nature of the incidental take of migratory birds caused by such commercial activities is significantly different than was understood at the time such permit was issued; or

(B) new best management practices, technologies or other measures can significantly reduce such impacts and can practicably be adopted by the applicant; and

(9) provide for revocation of the permit if the applicant fails to comply with the terms of such permit.

(n) *COMPLIANCE CERTIFICATION.*—The Secretary shall make each certification submitted under this section publicly available.

(o) *DE MINIMIS ACTIVITIES.*—The Secretary shall make a rule identifying categories of commercial activities by standard industrial classification that are exempt from liability for the killing or taking of migratory birds under this Act because they do not cumulatively or individually pose appreciable risks to migratory birds.

(p) *DEPOSIT OF MITIGATION FEES.*—Mitigation fees paid under this section shall be deposited into the North American Wetlands Conservation Fund established under the North American Wetlands Conservation Act (16 U.S.C. 4401 et seq.), the Neotropical Migratory Bird Conservation Fund established by section 9 of the Neotropical Migratory Bird Conservation Act (16 U.S.C. 6108), or such other fund or account established by the Secretary provided that priority for use of such fees shall be given to mitigating impacts or restoring or enhancing populations of bird species—

(1) affected by the permitted activities; and

(2) identified as “birds of conservation concern” under authority of section 13 of the Fish and Wildlife Conservation Act of 1980 (16 U.S.C. 2912).

(q) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated \$10,000,000 for each fiscal year beginning after the date of the enactment of this section to carry out this section.

(r) **REPORT TO CONGRESS.**—Not later than 5 years after the date of enactment of this section, and at the end of each 5 year period thereafter, the Secretary shall submit a report to the Chair and Ranking Member of the House Natural Resources Committee and to the Chair and Ranking Member of the Senate Environment and Public Works Committee on—

(1) the conservation status of migratory birds;

(2) the impacts upon migratory birds of commercial activities for which authorizing regulations have been issued under this section;

(3) the effectiveness of best management practices, technologies, and other measures in reducing such impacts; and

(4) such Secretary’s progress in carrying out the functions and responsibilities given to the Secretary under this section.

(s) **RESEARCH PROGRAM.**—The Secretary shall establish and maintain, in consultation with State fish and wildlife agencies, research institutions, institutions of higher education (as such term is defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))), wildlife conservation groups, and representatives of commercial activities regulated under this section, a research program to—

(1) evaluate the effectiveness of best management practices and technologies incorporated in regulations and permits under this section;

(2) develop and evaluate new or improved best management practices and technologies; and

(3) evaluate the impacts of commercial activities regulated under this section on bird populations.

SEC. 15. DEFINITIONS.

For the purposes of this Act:

(1) **INCIDENTAL TAKE.**—The terms “incidental take” and “incidentally take” means the killing or taking of migratory birds that directly and foreseeably results from, but is not the purpose of, a commercial activity.

(2) **COMMERCIAL ACTIVITY.**—The term “commercial activity” means—

(A) the conduct of any aspect of a business, concession, or service in order to provide goods or services to any person for compensation, including manufacturing, distributing, transporting, and marketing goods and services; and

(B) activities of Federal, State, or local governments related to the management or administration of government property or programs.

(3) **BEST MANAGEMENT PRACTICES.**—The term “best management practices” means operational practices, siting, and other guidelines prescribed by the Secretary to avoid or minimize the incidental take of migratory birds.

(4) *SECRETARY.*—The term “Secretary” means the Secretary of the Interior acting through the Director of the United States Fish and Wildlife Service.

DISSENTING VIEWS

This bill would have severe consequences for businesses and communities across the entire nation, and specifically for the rural power electric utilities. Rural electric utilities are the backbone of the local economies that they energize and without them, many Americans and their way of life will be put at risk. We should not allow reckless environmental policy, driven by special interest groups from the left, punish rural utilities with onerous, burdensome, over-regulation from the federal government.

As a matter of fact, electric cooperatives aren't the bad actors in the grand scheme of things when it comes to avian mortality in this country. According to research done by the U.S. Fish and Wildlife Service, by its best estimates, the top three causes of bird deaths are strikes from automobiles, collisions with glass buildings, and death from feline predation. House cats account for vastly more bird deaths in this country than any impact from rural electric utilities, and yet under the language of this bill, it's electric utilities who will be bearing the brunt of the heavy hand of federal regulation. It just does not make sense.

Migratory birds are protected from "takings" under the Migratory Bird Treaty Act (16 U.S.C. 703 et seq.). This bill amends that law to direct the Secretary of the Interior to authorize permits for the incidental take of migratory birds by certain commercial activities. These are any commercial activities that the Secretary of the Interior "determines cause[s] significant harm to migratory birds" and includes oil, gas, and wastewater disposal pits; methane or other gas burner pipes; communication towers; electric transmission and distribution lines; and wind and solar power generation facilities. In addition to obtaining these permits, which would include mitigation measures requiring adoption of the best management practices or technologies that in the Secretary's judgment are practicable and effective, permit holders would also pay a mitigation fee. The permits would be issued for up to 10 years. Before issuing a general permit, the Secretary would consult under section 7 of the Endangered Species Act of 1973 and prepare an environmental impact statement pursuant to the National Environmental Policy Act of 1969. Individual permits may also be issued. The bill permanently authorizes appropriations of \$10 million a year to carry out the Act.

Republicans remain skeptical the U.S. Fish and Wildlife Service will be able to create the robust permitting process necessary to manage the expectations the bill envisions without overburdening the energy, telecommunications, and other industries. As stated above, automobiles, buildings, and predatory cats contribute to more bird mortality than any of the activities covered by the permits in this legislation. Given the bill's annual cost to the U.S. taxpayers of \$10 million a year, it would seem to not be a fair return

without ensuring the permit system would substantially affect the issue of bird mortality.

Of further concern are the compensatory mitigation measures, the mitigation fee to be paid, and consultation with interested outside groups and affected federal agencies. The bill places additional constraints and burdens on virtually every potential infrastructure project in the country and charges the U.S. Fish and Wildlife Service with implementation targets that could be unattainable.

For these many reasons, many Republicans oppose this legislation.

ROB BISHOP.
LOUIE GOHMERT.
TOM MCCLINTOCK.
PAUL A. GOSAR.

